

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0287**

Charlene Karen Jundt,
Respondent,

vs.

Marcus Edward Jundt,
Appellant.

**Filed August 28, 2023
Affirmed
Segal, Chief Judge**

Hennepin County District Court
File No. 27-CV-22-10858

Benjamin J. Court, Kacie Phillips Tawfic, Stinson LLP, Minneapolis, Minnesota (for respondent)

Phillip Gainsley, Minneapolis, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Segal, Chief Judge;
and Kirk, Judge.*

NONPRECEDENTIAL OPINION

SEGAL, Chief Judge

This appeal arises out of respondent's renewal of a money judgment following the dissolution of the parties' marriage. Appellant Marcus Edward Jundt and respondent

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

Charlene Karen Jundt dissolved their marriage in September 2004, and Charlene subsequently obtained six money judgments against Marcus.¹ In July 2022, Charlene began the process of renewing one of the judgments, which was set to expire in September 2022. Marcus had since moved out of state and was not forthcoming about his address. As a result, Charlene attempted to serve Marcus with the summons and complaint to renew the judgment at several different residential and commercial addresses. Marcus moved to dismiss the lawsuit for lack of service, but the district court determined that Charlene effectively served Marcus via substitute service at a residential address in Arizona and denied the motion. We affirm.

FACTS

Marcus and Charlene Jundt married in August 1991 and dissolved their marriage in September 2004. In September 2012, Charlene obtained a judgment against Marcus in the amount of \$115,088 for unpaid child support.² She subsequently obtained five additional judgments against Marcus relating to the dissolution of the parties' marriage. The six judgments total approximately \$3.4 million.

¹ Because Marcus and Charlene share the same last name, we refer to them by their first names.

² At oral argument before this court, Marcus's counsel disputed that the September 2012 judgment was for unpaid child support and argued that Marcus was never behind on child support. The record here contains a copy of the judgment but does not contain the underlying submissions and documents relating to the judgment. However, the record does contain a 2016 order for contempt that indicates the September 2012 judgment was "for unpaid child support" and the findings and order from a 2016 arbitration proceeding that states, "According to Marcus's submissions, the undisputed facts [include that] . . . Charlene obtained a Judgment dated September 20, 2012 . . . for past due child support."

In July 2022, Charlene filed a complaint in district court to renew the September 2012 judgment. According to the complaint, Charlene obtained partial satisfaction of the judgment through the garnishment of Marcus's wages, but Marcus owed \$181,863.08 for the remaining unpaid principal and accrued interest. Charlene then attempted to serve Marcus with the summons and complaint. Marcus no longer lives in Minnesota and Charlene was unaware of his current address. Charlene attempted to serve Marcus at a residence in California and an office building in Arizona, but neither attempt was successful.

On July 29, 2022, the parties appeared for a video conference before a special magistrate regarding the dissolution file. During the conference, Charlene's counsel mentioned the renewal of the September 2012 judgment and that it was proving difficult to serve Marcus with the summons and complaint. Charlene's counsel asked Marcus's counsel if he would accept service on his client's behalf, and Marcus's counsel refused. The special magistrate then swore in Marcus and asked him the following questions regarding his residence:

Q: And, Mr. Jundt, where are you?

A: I'm in Arizona.

Q: Do you live in Arizona?

A: I became a citizen of Arizona, yes, so I could be near my parents during COVID.

Q: So do you have a place, an apartment? . . . Where are you living in Arizona?

A: I've lived in three different places. I've lived with my parents and I lived in an apartment and I live at Dennis Pacifico's house.

Q: Where are you today?

A: Dennis Pacifico's house.

Q: So you're residing in Dennis Pacifico's house?

A: Right.

Q: Is that where somebody would serve you if they needed to serve you with legal papers?

A: That would be correct.

Charlene had previously been mailed checks from Dennis Pacifico on behalf of Marcus³ as part of an agreement in the dissolution file. The checks and envelopes, which were dated between April 2021 and July 2022, all list an address on Longhorn Drive in Chandler, Arizona, as Dennis Pacifico's address (the Longhorn address).

On August 9, 2022, a process server attempted to serve Marcus at the Longhorn address. Following the attempt, the process server sent an email to Charlene's counsel that states "the server spoke with Dennis, current homeowner, stated that Jundt's [whereabouts] were unknown, no one here by that name, no other information known. Per the assessor's office, a Dennis and Karyn Pacifico [have] own[ed] this house since 2008." On August 10, a process server again attempted to serve Marcus at the Longhorn address. A woman answered the door but refused to identify herself. The process server left a copy of the summons, complaint, and accompanying exhibits with the woman. On August 22, a process server attempted service at the Longhorn address for a final time. This time, the process server left a copy of the summons, complaint, and accompanying exhibits with Karyn Pacifico.

³ The checks are from an account belonging to Dennis and Karyn Pacifico, but each states "Marcus Jundt" in the "For" section of the check.

On September 9, 2022, Marcus filed an answer asserting that he “ha[d] not been served with a summons and complaint in this action and that th[e] court lack[ed] jurisdiction over him.” Shortly thereafter, Charlene hired a private investigator to investigate Marcus’s whereabouts. The private investigator discovered that Marcus’s driver’s license listed an address on Beardsley Road in Scottsdale, Arizona (the Beardsley address). From September 13-21, 2022, process servers attempted to serve Marcus at the Beardsley address on at least seven occasions. All the attempts were unsuccessful.

Marcus filed an amended motion to dismiss, again claiming that service was ineffective. His counsel subsequently filed a memorandum in support of the motion that argued that the Longhorn address was not his usual place of abode and therefore could not be used for service. He asserted that service was therefore ineffective and that because he was not properly served, the district court lacked jurisdiction over him.

The district court denied the motion. The district court found: “Given [Marcus’s] assertion that his residence was at two different addresses, and the financial resources to which [Marcus] has access, it is reasonable for the Court to conclude that [Marcus] resides at more than one address. As such, it is reasonable for the Court to conclude that both the [Longhorn] and Beardsley Addresses were usual places of abode for [Marcus] at the time of service.” Based on this finding, the district court determined that Charlene effectively served Marcus via substitute service on Karyn Pacifico at the Longhorn address.

DECISION

Service of process in a manner not specifically authorized by rule or statute is ineffective. *Lundgren v. Green*, 592 N.W.2d 888, 890 (Minn. App. 1999), *rev. denied* (Minn. July 28, 1999). An individual residing outside of Minnesota may be served through personal service. Minn. R. Civ. P. 4.04(b); *see also* Minn. Stat. § 543.19, subd. 2 (2022) (“The service of process on any person who is subject to the jurisdiction of the courts of this state . . . may be made by personally serving the summons upon the defendant outside this state . . .”). Although commonly referred to as substitute service, the “service upon an individual by leaving a copy at his usual place of abode with some person of suitable age and discretion residing therein—is a form of ‘personal’ service.” *Lebens v. Harbeck*, 243 N.W.2d 128, 129 (Minn. 1976); *see also Jaeger v. Palladium Holdings, LLC*, 884 N.W.2d 601, 604-05 (Minn. 2016).

“Whether service of process was effective, and personal jurisdiction therefore exists, is a question of law that we review *de novo*.” *Shamrock Dev., Inc. v. Smith*, 754 N.W.2d 377, 382 (Minn. 2008). But in conducting this review, we “apply the facts as found by the district court unless those factual findings are clearly erroneous.” *Id.* Factual “findings are clearly erroneous when they are manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole.” *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021) (quotation omitted). Under the clear-error standard of review, it is not proper for this court to reweigh the evidence; our role is instead to review “the record to confirm that evidence exists to support the decision.” *Id.* at 222.

We begin by identifying the narrow issue before this court on appeal. The district court determined that Marcus was effectively served through substitute service on Karyn Pacifico at the Longhorn address. Marcus argues that the district court erred in determining that substitute service was effective because the Longhorn address was not his “usual place of abode” and therefore not a proper residence for service. “In the context of service of process, the residency of an individual presents a question of fact.” *Jaeger*, 884 N.W.2d at 606-07. As such, we will defer to the district court’s finding on residency unless it is clearly erroneous. *Id.* at 607.

The evidence to support the district court’s finding that the Longhorn address was Marcus’s usual place of abode is as follows. In response to questions from the court-appointed special magistrate at the July 29 video conference, Marcus stated under oath: “I’ve lived in three different places. I’ve lived with my parents and I lived in an apartment and I live at Dennis Pacifico’s house.” Marcus then confirmed that he was at Dennis Pacifico’s house at the time of the video conference, that he resided at the house, and that it would be the proper place for him to be served with legal papers. Marcus did not provide an exact address for “Dennis Pacifico’s house,” but Charlene had been receiving checks for over a year from Dennis Pacifico with the Longhorn address printed under Dennis and Karyn Pacifico’s names. The most recent of these checks submitted into the record is dated July 3, 2022, less than a month before this action was filed in district court. In addition, a process server consulted property records and confirmed that Dennis and Karyn Pacifico had owned the residence at the Longhorn address since 2008.

Based on this record, the district court's residency finding is not clearly erroneous. Marcus is correct that he did not identify a specific address when he stated under oath that he resided at "Dennis Pacifico's house," but there is ample evidence to support the finding that the Longhorn address was the house being referenced given that Charlene had received mail from that address for over a year, the address was listed on the checks written by Dennis Pacifico, and the Pacificos had owned the property for nearly 15 years. At oral argument before this court, Marcus's counsel asserted that the Beardsley address is also owned by Dennis Pacifico, and that Marcus was referring to the Beardsley address when he stated that he resided at "Dennis Pacifico's house." But Marcus did not submit any evidence to support this assertion. *See DeCook v. Olmsted Med. Ctr., Inc.*, 875 N.W.2d 263, 271 (Minn. 2016) (stating that when a plaintiff clears the "low hurdle" of submitting evidence of service, the burden shifts to the defendant "to prove insufficient service"). Accordingly, the evidence supports the district court's finding that the Longhorn address was a proper place for service. The district court thus did not err in determining that substitute service on Karyn Pacifico at the Longhorn address was effective and denying the motion to dismiss.

Affirmed.